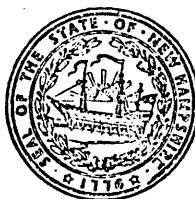


The State of New Hampshire

april 18 1974

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Concord

June 18, 1974

Mr. Roy Y. Lang, Director
Department of Personnel
State House Annex
Concord, New Hampshire 03301

Dear Mr. Lang:

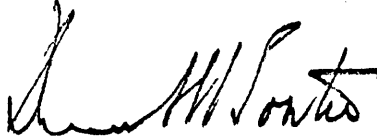
In your letter dated April 25, 1974 you noted that the national Fair Labor Standards Act, applicable to state employees on and after May 1, 1974, requires payment for overtime work as defined in the Act at one and one half times the normal rate. To the extent that compensation as so determined exceeds that which would otherwise have been payable under state law, you asked whether funds to pay that compensation could be drawn from the salary adjustment fund. Our opinion is that the salary adjustment fund may be used for this purpose.

The salary adjustment fund is authorized by RSA 99:4, to be accumulated biennially from unexpended funds appropriated for personal services and to "be available for transfer to departments and institutions in amounts that are deemed necessary to comply with chapter 98, RSA" upon your certification with approval of the Governor and Council. RSA 98 established your department "for the ... compensation ... of state employees and for other incidents of state employment." RSA 98:3. Thus, to comply with RSA 98 it is necessary to provide for compensation and other incidents of employment. The national Act now determines the rate for such overtime compensation; compensation at such a rate is now an incident of state employment. Therefore provision for compensation at such rate must be regarded as provision for compensation or for an incident of state employment within the meaning of RSA 98; provision for it is, then, necessary to comply with RSA 98 and a proper use of the salary adjustment

Mr. Roy Y. Lang, Director
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fund. This opinion is not intended, of course, to authorize more overtime work than the Legislature authorized in the applicable appropriations acts; it is addressed only to the means of meeting the increased cost of what the Legislature did authorize.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "D. H. Souter", written in a cursive style.

David H. Souter
Deputy Attorney General

DHS/p